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Board of Adjustment Staff Report

TO: BOARD OF ADJUSTMENT

FROM: CATHERINE LORBEER, AICP, PRINCIPAL PLANNER *ajl*
(480) 503-6016, CATHERINE.LORBEER@GILBERTAZ.GOV

THROUGH: LINDA EDWARDS, AICP, PLANNING MANAGER *LE*
(480) 503-6750, LINDA.EDWARDS@GILBERTAZ.GOV

MEETING DATE: JULY 2, 2014

SUBJECT: AP14-01 (HILL STABLES) APPEAL OF THE ZONING
ADMINISTRATOR'S ZONING INTERPRETATION REGARDING THE
LOCATION AND USE OF A STABLE ON PROPERTY LOCATED AT
2604 E. WASHINGTON AVENUE AND ZONED SINGLE FAMILY-43
(SF-43) ZONING DISTRICT.

STRATEGIC INITIATIVE:	N/A
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RECOMMENDED MOTION

- A. Move to uphold the decision of the Zoning Administrator that interprets a "Stable, Commercial" is not a permitted use on the subject property; and
- B. Move to overturn the decision of the Zoning Administrator that interprets the location of the accessory structures and fenced corral area used to house animals as not in compliance with code and instead find them to be legal, non-conforming uses and structures.

APPLICANT/OWNER

Name Timothy La Sota
Company Tiffany & Bosco, P.A.
Address Camelback Esplanade II Third Fl
2525 E. Camelback Road
Phoenix, AZ 85016-9240
Phone (602) 452-2712
Email tal@tblaw.com

Name Jane Hill
Address 2604 E. Washington Ave.
Gilbert, AZ 85234
Phone (602) 558-4407
Email hwfs@aol.com

BACKGROUND/DISCUSSION

History

Date	Action
<i>May 9, 2006</i>	Town Council annexed 42.86 acres of Gilbert Country Acres, including the 1.03 acre subject site per Ordinance No. 1741 (Case A06-08).
<i>June 20, 2006</i>	Town Council approved Case Z06-09, rezoning 42.86 acres from Maricopa County R-43 to Town of Gilbert Single Family-43 (SF-43) per Ordinance No. 1778.

Overview

The request is an appeal of the Zoning Administrator's interpretation in regard to the location and use of a stable on property situated at 2604 E. Washington Avenue, Gilbert, Arizona. Please refer Attachment 2 for the Appeal Application submitted on April 21, 2014.

The 1.03 acre subject property is zoned Single-Family 43 (SF-43), and consists of a home and accessory structures used to house animals (stable, corral, shade structure). The principal use of the property is a single family residence. The home and the accessory structures were constructed on the property before annexation from the County in May of 2006. Upon annexation, the Maricopa County Rural-43 zoned property was assigned comparable Town of Gilbert zoning of SF-43.

The property abuts similar Single Family-43 (SF-43) 1-acre plus lots on the north and east sides. Greenfield Elementary School is located west of the subject site. The stable, corral and shade structure are located near the northeast corner of the site. From this area, neighboring SF-43 residences are located between 60 and 110 feet toward the north and east. The subject site has access from a circular driveway on Washington Avenue and a second driveway on Poinciana Road.

In the Spring of 2013, Code Compliance responded to a complaint about horse boarding and commercial business on the property (see Attachment 3 photo). After meetings with the property owner, a formal request for a Zoning Interpretation was subsequently submitted on March 19, 2014 and the Zoning Interpretation was issued on April 9, 2014 (see Attachment 4).

Appeal Discussion and Analysis

In response to the appeal request, Staff located various aerial photography of the subject site available on the Maricopa County website, with dates from 2006 and 2013 (See Attachment 5). It appears that the accessory structures, shading and fenced corral areas used to house animals have existed on the subject site since before annexation to the Town in May 2006. Although some additional fencing/pens inside of the corral area appear to have been added; that installation would not have required a building permit. Therefore, staff concludes that the accessory structures and fences used to house animals (stable, corral, shade structure) are legal, non-conforming uses and structures.

In addition to the code sections and relevant facts listed in the April 9, 2014 Zoning Interpretation, staff reviewed the Maricopa County Zoning Ordinance and found references to “one single-family dwelling” and “corrals for the keeping of horses” as permitted uses under Maricopa Rural-43 zoning. Commercial/public stables and boarding were found to require a special use permit, which is comparable with requirements of the Town of Gilbert.

In both the request for a zoning interpretation and the appeal, the property owner’s attorney has focused his analysis on what constitutes a “commercial” stable (refer to Attachment 2). The property owner contends that the common, everyday meaning of “commercial” is a profit making venture. The property owner describes the boarding activity on the property as occasional boarding of horses for friends who pay only the costs associated with boarding the animals. Ms. Hill indicates that she does not make money from her stables and is not operating a business.

Under the Town of Gilbert LDC, the subject property does not contain the necessary lot size or the required use permit to allow a “Stable, Commercial.” Maricopa County Planning staff has also confirmed that up until 2009, prior Maricopa County Rural-43 zoning would only have permitted the boarding of horses (not owned by the property owner) with an approved special use permit.

Consequently, staff would refer to the LDC provisions for a “Stable, Non-Commercial” (Residential), which is only permitted in the SF-43 zone “as a use incidental to the principal use of the property.” A “Stable, Residential” is, by definition “a detached accessory structure for the keeping of horses, mules, and ponies owned by the occupants of the premises and not for compensation.” See Land Development Code (LDC) Article 6.1 Use Definitions. Therefore, staff concludes that the accessory structures and fences used to house animals (stable, corral, shade structure) on the subject property may not be used to board horses for others, regardless of whether compensation is provided.

The maximum large livestock animals permitted on the 1.03 acre lot is four; if a combination of large and small livestock animals are kept on the lot, three large livestock animals and three small livestock animals are permitted. See LDC Section 2.107.A.2.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

Staff has received comment from residents in Gilbert Country Acres, who are concerned about the over application of the code on former County lands that were annexed with their previous uses intact. They are also concerned that newer residents should not choose to live amongst horse properties if they have complaints about horses. See Attachment 6.

STAFF RECOMMENDATION

Staff recommends that the Board of Adjustment:

- A. Move to uphold the decision of the Zoning Administrator that interprets a “Stable, Commercial” is not a permitted use on the subject property; and
- B. Move to overturn the decision of the Zoning Administrator that interprets the location of the accessory structures and fenced corral area used to house animals as not in compliance with code and instead find them to be legal, non-conforming uses and structures.

Respectfully submitted,



Catherine Lorbeer, AICP
Principal Planner

Attachments and Enclosures:

- 1. Notice of Public Hearing
- 2. Appeal Application submitted on April 21, 2014
- 3. Code Compliance Photos of Signs
- 4. Zoning Interpretation issued on April 9, 2014
- 5. Historical Aerial Photos
- 6. Citizen Comments

Notice of Public Hearing

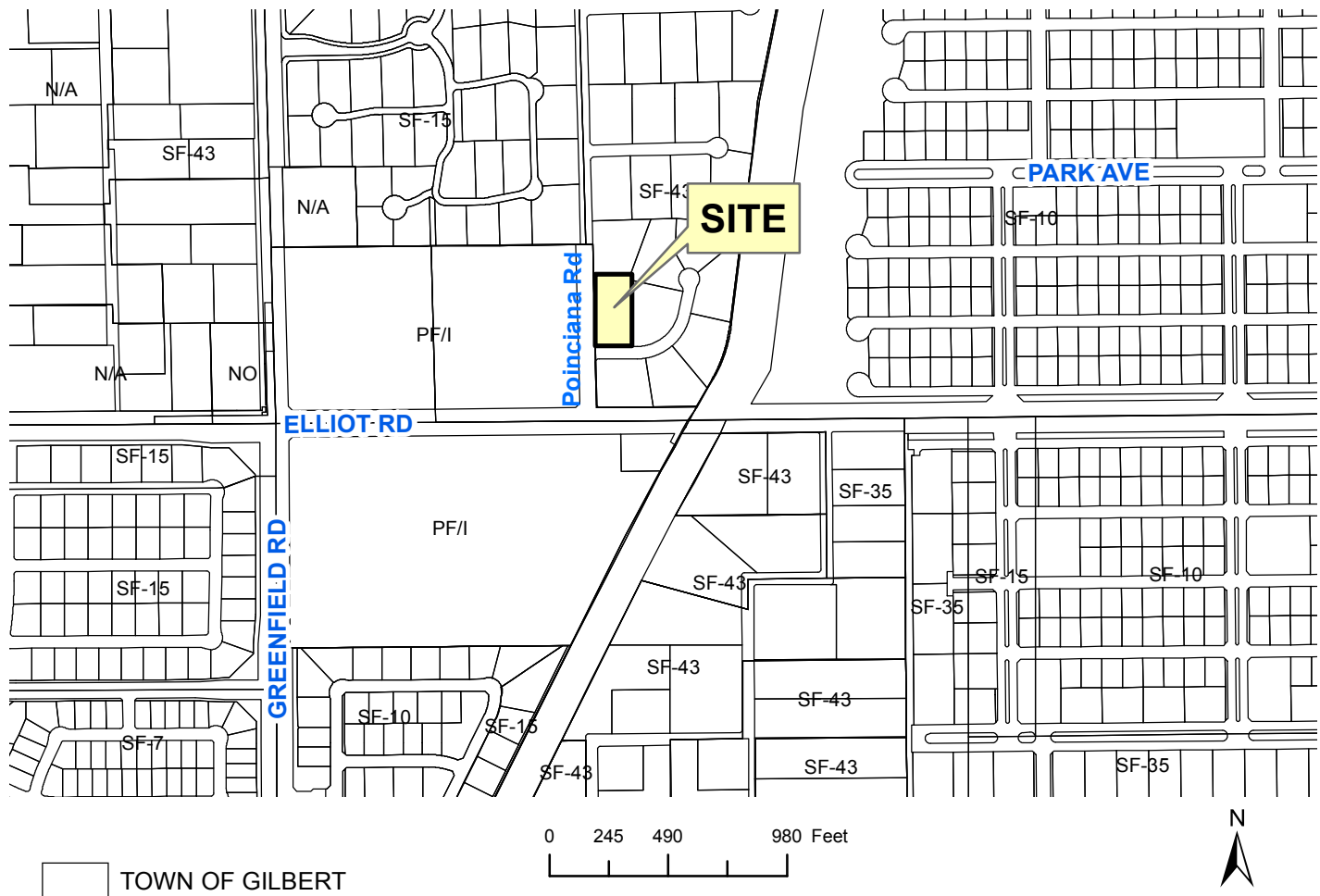
BOARD OF ADJUSTMENT DATE:**Wednesday, June 4, 2014* TIME: 6:00 PM****LOCATION: Gilbert Municipal Center
50 E. Civic Center Drive
Gilbert, Arizona 85296**

* Call Planning Department to verify date and time: (480) 503-6700

REQUESTED ACTION:

AP14-01: Appeal to the Town of Gilbert Board of Adjustment from the Town of Gilbert Zoning Administrator's zoning interpretation regarding the location and use of a stable on property located at 2604 E. Washington Avenue, Gilbert, Arizona. The property is zoned Single-Family-43 (SF-43) zoning district. The Board of Adjustment may uphold, modify, or overrule the decision of the Zoning Administrator.

* The application is available for public review at the Town of Gilbert Development Services division M-Th-7:00-6:00.



APPLICANT: Tiffany & Bosco, P.A.
CONTACT: Timothy A. La Sota
ADDRESS: 2525 East Camelback Road, Third Floor
 Phoenix, AZ 85016

TELEPHONE: 602-452-2712
FAX: 602-255-0103
EMAIL: tal@tblaw.com



RECEIVED APPEAL

APR 21 2014 APPLICATION

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

Received By:

Project Name: JANE HILL PROPERTY

Address or Location: 2604 East Washington Avenue, Gilbert, AZ

Grounds upon which the appeal is based (may attach separate sheet):

PLEASE SEE ATTACHED CORRESPONDENCE AND AERIAL PHOTO

Applicant/Contact: (Please print - all info must be provided)

Company: Tiffany & Bosco, P.A.
Contact Name: Timothy A. La Sota E-mail: tal@tblaw.com
Address: 2525 East Camelback Road, Third Floor
City, Zip: Phoenix, AZ 85016
Phone: (602) 452-2712 Fax: (602) 255-0103
Signature: [Signature] Date: April 21, 2014

Owner: (Please print - all info must be provided)

Contact Name: Jane Hill E-mail: hwfs@aol.com
Address: 2604 East Washington Avenue
City, Zip: Gilbert, AZ
Phone: (602) 558-4407 Fax:
Signature: [Signature] Date: April 21, 2014

FOR STAFF USE ONLY	
Submittal Date	4/21/14
Case Number	AP14-01
Fee Paid	305.00
EDEN Permit Number	PAP-2014-00001
EDEN Permit Type	PADRP PADRAPP PZAAPP
Receipt Number	

CATHARINE LOANER

16C



**TIFFANY
& BOSCO**
P.A.

TIMOTHY A. LA SOTA
ATTORNEY AT LAW
DIRECT LINE: (602) 452-2712
TAL@TBLAW.COM

April 21, 2014

VIA HAND DELIVERY

Zoning Department
Town of Gilbert
90 East Civic Center Drive
Gilbert, AZ 85296

Re: Jane Hill, 2604 East Washington Avenue, Gilbert, AZ

Dear Sir or Madam:

Please find attached our appeal from the Zoning Interpretation of Zoning Administrator Michael Milillo.

I attach our original letter because it contains the gravamen of what is still our position, and incorporate this into our appeal by reference. Mr. Milillo simply regurgitated code provisions and did not deal with the substantive arguments advanced by Ms. Hill. We believe that the legal points we make in the letter remain valid, and urge these grounds in our appeal.

In addition, I have attached an aerial photograph of Ms. Hill's property taken in 1992. Ms. Hill's property has been configured and utilized in the same fashion as it is now for decades, as this photo attests to. I believe it is important for the Town to adhere to the promises it makes to residents who are annexed into the Town of Gilbert. So far, with the regulatory steps taken, it is clear the Town is not living up to its commitment. There was never a problem when it was in unincorporated Maricopa County, and residents can hardly be blamed for believing that things would continue as they were since that is what the Town told them.

Sincerely,

TIFFANY & BOSCO, P.A.

Timothy A. La Sota

TAL/jjw
Attachments

4110243





**TIFFANY
& BOSCO**
P.A.

TIMOTHY A. LA SOTA
ATTORNEY AT LAW
DIRECT LINE: (602) 452-2712
TAL@TBLAW.COM

March 19, 2014

VIA FIRST CLASS MAIL

Mr. Michael Milillo
Zoning Administrator
Town of Gilbert
90 East Civic Center Drive
Gilbert, AZ 85296

Re: Jane Hill, 2604 East Washington Avenue, Gilbert, AZ

Dear Mr. Milillo:

As you know, this firm represents Jane Hill, who resides in the Town of Gilbert at 2604 East Washington Avenue.

I write you today to formally request a zoning interpretation. At issue is what constitutes a "commercial" stable. As you know, the Gilbert Zoning Code requires a minimum of ten acres in order to operate a commercial stable. Gilbert Zoning Code § 2.107(B).

The facts in our case are as follows. Ms. Hill occasionally boards horses for friends. When she does this, the owner of the horse does pick up the costs of certain expenses such as horse feed. However, whatever costs are picked up by the owner of the horse are exactly that—costs associated with boarding an animal. The payment of expenses is intended to cover the costs associated with boarding the animal—Ms. Hill does not make money from her stables, and there is no "profit" to her from boarding horses. In short, she does this out of friendship and because she likes having horses around, not as a commercial endeavor.

I found no definition of the term "commercial" in the Gilbert Zoning Code. In the absence of such a special definition, you should follow the rule of construction and apply the plain and ordinary meaning to the term "commercial." *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834 (1990). And under the common definition of the term, it is clear that commercial means profit making.

Merriam Webster gives the following meanings to the adjective commercial:

- related to or used in the buying and selling of goods and services
- concerned with earning money
- relating to or based on the amount of profit that something earns



TIFFANY
& BOSCO
P.A.

Mr. Michael Milillo
City of Gilbert
March 19, 2014
Page -2-

<http://www.merriam-webster.com/dictionary/commercial>

This definition of commercial proves our point. There is no profit or earning of money in this instance. In addition, there is no real sale of a good or service simply because there is no "sale" of anything here.

Clearly the common, everyday meaning of "commercial" is a profit making venture. This interpretation is supported by the definition above and also by *Primary Consultants, L.L.C. v. Maricopa County Recorder* 210 Ariz. 393, 111 P.3d 435, (App. 2005). In that case, the court interpreted the phrase "commercial purpose" as is found in the Arizona Public Records Law. The Court concluded that the use of public records in a for-profit capacity met the definition of commercial as it is generally understood, it did not meet the special statutory definition under Arizona law.

To illustrate the point further, let's take the example of a person who stays at a friend or relatives' home for a period of time. Though the person might purchase groceries to help defray the costs of that person staying at the house, that does not mean that the homeowner is running a hotel or a for profit business.

Conclusion

I hope you will agree with me that Ms. Hill's actions of allowing friends to use her stables, one or two horses at a time, does not mean that Ms. Hill is running a "commercial" stable under the circumstances.

Sincerely,

TIFFANY & BOSCO, P.A.

A handwritten signature in dark ink, appearing to read 'Timothy A. La Sota', written in a cursive style.

Timothy A. La Sota

TAL/jjw

2386695

AP14-01

Attachment 3: Code Compliance

Photos of Signs

July 2, 2014

HORSE RIDING 
LESSON⁰R LEASE 
 602-615-4123
FACEBOOK.COM/
YOUNGGUNSTABLES

8-22-13



April 9, 2014

Mr. Timothy A. La Sota
Tiffany & Bosco, P.A.
Camelback Esplanade II, Third Floor
2525 East Camelback Road
Phoenix, Arizona 85016-9240

Re: Zoning Interpretation - Use of Stable located at 2604 E. Washington Avenue, Gilbert, Arizona

Dear Mr. La Sota:

We received your letter and fee payment submitted to the Development Services Department on March 26, 2014, requesting a formal zoning interpretation in regard to the location and use of a stable on property situated at 2604 E. Washington Avenue, Gilbert, Arizona. This property is zoned Single-Family 43 (SF-43).

In response to your request, we have reviewed the extensive investigation materials collected by our Code Compliance division, including observations, photographs, aerial maps and county records. In addition, we've reviewed the Land Development Code (LDC) land use regulations for the Single-Family Residential zoning districts.

Facts:

- 1) The subject property is a 1.03 acre lot on which there is a home and accessory structures used to house animals (stable, corral, shade structure). It appears that the principal use of the subject property at this time is a single family residence.
- 2) The owner's description of the use on the property is that she occasionally boards horses for friends, who pay the costs associated with boarding the animals. Ms. Hill indicates that she does not make money from her stables and is not operating a business.
- 3) The photographs taken by Code Compliance staff and adjacent or nearby neighbors show a fenced corral that is less than 20 feet from the property line. The photographs also show advertising of horse riding lessons.

Relevant LDC Provisions

- 1) The land use classifications shown in the LDC Table 2.103 contain the use “Stables, Commercial.” According to Table 2.103, a “Stable, Commercial” use is only allowed in the SF-43 zone with a use permit. Additionally, pursuant to LDC Section 2.107.B, Commercial Stables may only be located on a minimum lot area of 10 acres and any structure housing animals shall be set back at least 100 feet from all property lines.
- 2) The land use classifications shown in the LDC Table 2.103 contain the use “Stables, Non-Commercial.” A “Stable, Non-Commercial” (Residential) use is only permitted in the SF-43 zone “as a use incidental to the principal use of the property.”
- 3) Pursuant to LDC Section 2.107.D, the accessory structures used to house animals must be located at least 20 feet from all property lines.
- 4) A “Stable, Residential” is, by definition, “a detached accessory structure for the keeping of horses, mules, and ponies owned by the occupants of the premises and not offered for compensation.” See LDC Article 6.1 Use Definitions.
- 5) Pursuant to the Town of Gilbert Municipal Code, Section 6-126 Definitions, horses are considered to be “Large Livestock Animals.”
- 6) The maximum large livestock animals permitted on the 1.03 acre lot is four; if a combination of large and small livestock animals are kept on the lot, three large livestock animals and three small livestock animals are permitted. See LDC Section 2.107.A.2.

Zoning Interpretation:

Based on the information provided by the applicant, the facts listed above, and relevant sections of the Municipal Code and Land Development Code, the Zoning Administrator finds as follows:

- The subject property is a developed single-family residential lot.
- The use of the property for a “Stable, Commercial” is not permitted nor are signs advertising commercial activity.
- The incidental use of the property for a “Stable, Non-Commercial” (Residential) may be permitted; however, the location of the accessory structures and fenced corral area used to house animals do not comply with Code.
- The stable and corral area shall only be used to house animals owned by the occupants of the premises and not offered for compensation.

- The property may have a maximum of four large livestock animals or three large livestock animals and three small livestock animals kept on the property at any given time.

Appeal Process

Please be advised that you may appeal a decision of the Zoning Administrator to the Town's Board of Adjustment within 10 calendar days pursuant to the procedures set forth in Land Development Code Section 5.2011: Procedures for Appeals. The appeal shall be filed with the Planning & Development Services Division on a form established by the Director of Planning. The appeal shall set forth the decision or decisions being appealed and the grounds upon which the appeal is based. The appeal shall be accompanied by any applicable fees.

If you have any questions about my determination, please contact the Catherine Lorbeer, Principal Planner at 480-503-6016 or via email at: Catherine.Lorbeer@gilbertaz.gov

Sincerely,



Michael Milillo
Senior Planner/ Zoning Administrator
Planning Services Division

cc: Zoning Administrator Interpretation File
Jack Vincent, Assistant Town Attorney
Kyle Mieras, Development Services Director
Linda Edwards, Planning Services Manager
Adam Adams, Code Compliance Administrator

Aerial Photo from Dec.1998 – Oct. 1999

<http://gis.maricopa.gov/MapApp/GIO/AerialHistorical/index.html>



Aerial Photo from Jan. 2006 – Feb. 2006

<http://gis.maricopa.gov/MapApp/GIO/AerialHistorical/index.html>



Aerial Photo from Sept. 2013 – Nov. 2013

<http://gis.maricopa.gov/MapApp/GIO/AerialHistorical/index.html>



From: Frank Engstrom
Sent: Thursday, June 19, 2014 12:21 PM
To: Catherine Lorbeer
Cc: Linda Edwards
Subject: Re: AP14-01 Hill Stables

Categories: Board of Adjustment

To Catherine Lorbeer, Planner, City of Gilbert P&Z, regarding the enforcement action against the property of Jane Hill.

Please share my comments on the above titled action with the entire board as I am unable to attend the scheduled hearing on July 2nd due to out of town travel.

I am a resident of Gilbert Country Acres, a development originally created under the laws and rules of Maricopa County. My home front view is to the property of the complainant. We (the neighborhood) annexed into Gilbert partly because we thought it a good idea to become part of our immediate community, and partly because we were being forced to, by high pressure from the town over the issue of Fire Protection at the time. In order to persuade the residents to take this action many promises were made by various officials of Gilbert that the rules governing our neighborhood would carry over with the intent of having little or no change to our country lifestyle. Most of us moved to this area because of over- technical, tight interpretations of rules common to HOA communities in our area. That means that we live in an environment where we understand the minor variations that occur as a natural consequence of people living near one another. We have an open lifestyle which means we can see our neighbors. We know one-another, and we don't have walls up around our properties. We don't complain about our neighbors unless something really egregious occurs.

Jane Hill (and her husband until his death a few years ago) have lived here with no issues for decades! She has always had some horses on her property and the facilities she has have been there, unchanged except for minor repairs, for all of that time. Now, a fairly recent new resident has taken it upon herself to complain about the presence of horses (and just about everything else she sees) using a highly restrictive interpretation of the town's rules to try to stop Jane from her low-impact lifestyle. She has even erected a 7 FT high block fence all along one side of her property so she wouldn't have to look at her neighbor's house to the North. She even wanted that wall to reach all the way to the street edge and was very upset when the rules wouldn't allow that! She has had more rules violations in the short time she has lived here than the rest of the street combined. But, because of our "live and let live" lifestyle, we have not filed any complaints about her.

We certainly all understand that if someone were to create a bustling stable here with constant comings and goings, that that would be disruptive to all our lives and that's the reason for the rule against commercial stables. To include Jane Hill's home in that interpretation is a gross over application of that rule! If that interpretation were applied widely (which it is NOT!) nearly every home with horses could be swept up by it! I feel confident that if a survey were taken of homes with horses in the town area, greater than 8 of 10 would have at least one horse that doesn't belong to the owners. That cannot be the criteria for determining commercial use! Using it here, on only Jane Hill's situation, would certainly be considered selective enforcement!

Also, to address the issue of a sign for services that was posted: The sign was pinned up briefly by a teenager who Jane had temporarily allowed to keep her horse on the property. The same teenager kept her horse on our property as well for a short time. The teenager was merely trying to make a little hobby money between school dates! As soon as Jane realized it was there, she asked the teenager to remove it. That is barely more commercial than a "yard sale" sign and to suggest otherwise is ridiculous!

In conclusion, I vehemently oppose this overly strict interpretation of the commercial use rule and recommend that the commission reverse the earlier decision. Please don't allow a neighborhood troublemaker to ruin the life of a calm, otherwise happy neighborhood.

Sincerely,

Frank Engstrom

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

Gilbert

Catherine Lorbeer

From: Jim Lair
Sent: Saturday, June 21, 2014 9:33 AM
To: Catherine Lorbeer
Cc:
Subject: AP 14-01 Hill Stables

Categories: Board of Adjustment

I support the Hill Stables!! The person complaining should have thought about having horses nearby when buying their property in an area that allows horses. It is like people buying near an airport then complaining about aircraft noise, not too smart.

Jim Lair
Gilbert Country Acres